IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 30963 of 2007(J)

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IA Nos.1579, 1580 & 1581/07 in OS.326/2006 of MUNSIFF COURT, PALA

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PETITIONERS:

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1. K.E. SHAJI,
   KARIMARUTHUMKAL, BHARANAGANAM VILLAGE,
   ULLANADU KARA.

2. KUTTAPPAN,
   KARIMARUTHUMKAL, BHARANAGANAM VILLAGE,
   ULLANADU KARA.

BY ADV. SRI.P.C.HARIDAS

RESPONDENTS:

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1. JOSE THOMAS,
   VETTIKUZHIYIL, BHARANAGANAM VILLAGE,
   ULLANADU KARA.

2. THOMAS,
   VETTIKUZHIYIL, BHARANAGANAM VILLAGE,
   ULLANADU KARA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**M.N.Krishnan, J.**

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**W.P(C).No.30963 of 2007**

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**Dated this the 18th day of October, 2007.**

**JUDGMENT**

This Writ Petition is filed with a prayer to set aside Exts.P7 to P9. Ext.P7 order is passed in an application for issuance of a Commission. Ext.P8 order is passed in the joint trial application. Ext.P9 is passed in the I.A. where a request is made to remove it from the list. All the prayers have been disallowed. A perusal of the counter statement filed by the defendants in O.S.No.326 of 2006 would reveal that the suits are pending with a prayer that the plaintiffs in one suit are claiming right over the other man's property as of right as an easement and in another suit the plaintiffs therein are claiming right over the property of the defendants by easement by prescription. In other words, though both the suits are for easement right it is with respect to different properties. So, I find that the court below was justified in rejecting the application for joint trial.

2. Now the question to be considered is regarding the issuance of a Commission. Just because an application is filed on the eve of the trial of the suit, it shall not be outrightly rejected especially when it is seen that the suit is of the year 2006 only. In a suit for easement by prescription, the identity of the property, identity of the way, etc. loom large and it may be necessary for resolving the controversy between the parties. Therefore, though belated, the court has to consider whether there is any merit in the Commission application.

3. Therefore, I set aside the order passed in I.A.No.1581 in O.S.No.326 of 2006 and direct the court to restore it and hear it on merits and dispose of the same in accordance with law. Since such a prayer is allowed necessarily, the court may have also to remove the case from the list.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 22/10